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FEE TRANSMITTAL
For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

| | | |
|--------------------------------|-------------|---------------|
| TOTAL AMOUNT OF PAYMENT | (\$) | 500.00 |
|--------------------------------|-------------|---------------|

Complete if Known

| | |
|--------------------|------------|
| Application Number | 09/966,802 |
|--------------------|------------|

| | |
|--------------------|---------------------------|
| Filing Date | September 28, 2001 |
|--------------------|---------------------------|

| | |
|----------------------|----------------|
| First Named Inventor | Arthur Sheiman |
|----------------------|----------------|

Examiner Name D. Malzahn

| | |
|----------|------|
| Art Unit | 2193 |
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| | |
|---------------------|-----------|
| Attorney Docket No. | 42.P10700 |
|---------------------|-----------|

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AUG 15 2005

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

| Application Type | FILING FEES | | SEARCH FEES | | EXAMINATION FEES | | Fees Paid (\$) |
|------------------|-------------|-----------------------|-------------|-----------------------|------------------|-----------------------|----------------|
| | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | |
| Utility | 300 | 150 | 500 | 250 | 200 | 100 | |
| Design | 200 | 100 | 100 | 50 | 130 | 65 | |
| Plant | 200 | 100 | 300 | 150 | 160 | 80 | |
| Reissue | 300 | 150 | 500 | 250 | 600 | 300 | |
| Provisional | 200 | 100 | 0 | 0 | 0 | 0 | |

2. EXCESS CLAIM FEES

| C. EXCESS CLAIM FEES | | | | Small Entity | |
|--|---------------------|-----------------|----------------------|----------------------------------|----------------------|
| Fee Description | | Fee (\$) | | Fee (\$) | |
| Each claim over 20 (including Reissues) | | 50 | | 25 | |
| Each independent claim over 3 (including Reissues) | | 200 | | 100 | |
| Multiple dependent claims | | 360 | | 180 | |
| <u>Total Claims</u> | <u>Extra Claims</u> | <u>Fee (\$)</u> | <u>Fee Paid (\$)</u> | <u>Multiple Dependent Claims</u> | |
| 0 - 20 or less | 0 | = | 0 | <u>Fee (\$)</u> | <u>Fee Paid (\$)</u> |

| <u>Total Claims</u> | <u>Extra Claims</u> | <u>Fee (\$)</u> | <u>Fee Paid (\$)</u> |
|---------------------|---------------------|-----------------|----------------------|
| 0 - 20 or HP = | 0 x | = | 0 |

HP = highest number of total claims paid for, if greater than 20.

| | | | | | | |
|----------------------|--------------|---------------------|---|-----------------|---|----------------------|
| <u>Indep. Claims</u> | | <u>Extra Claims</u> | | <u>Fee (\$)</u> | | <u>Fee Paid (\$)</u> |
| 0 | - \$ or HP = | 0 | x | | = | 0 |

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

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Total Sheets **Extra Sheets** **Number of each additional 50 or fraction thereof** **Fee (\$)** **Fee Paid (\$)**

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|---------------------|-----------------------|
| OTHER FEE(S) | Fees Paid (\$) |
|---------------------|-----------------------|

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief Fee

\$ 500.00

SUBMITTED BY

| | | | |
|-------------------|---|---|------------------------|
| Signature |  | Registration No. (Attorney/Agent) 39,996 | Telephone 703-633-1061 |
| Name (Print/Type) | Alan Pedersen-Giles | Date August 15, 2006 | |

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Page 1 of 15

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Date: August 15, 2005

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TO: **USPTO**
Examiner D. Malzahn
Art Unit 2193
Fax Number 571-273-8300

FROM: **Alan Pedersen-Giles**
Fax Number 703-633-3303
Phone Number 703-633-1061

SUBJECT: Application Number 09/966,802
Inventor(s) Arthur Sheiman et al.
Date Filed 9/28/2001
Docket Number 42.P10700
Title Time Varying Filter With Zero And/Or Pole Migration

INCLUDED IN THIS TRANSMISSION:

| | |
|-----------------|----------|
| Fax Cover Sheet | 1 page |
| Fee Transmittal | 1 page |
| Transmittal | 1 page |
| Appeal Brief | 12 pages |

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Cathy Dikes

Cathy Dikes

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**TRANSMITTAL
FORM**

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Total Number of Pages in This Submission

15

Application Number

09/566,802

Filing Date

September 28, 2001

First Named Inventor

Arthur Sheiman

Art Unit

2193

Examiner Name

D. Matzahn

Attorney Docket Number

42.P10700

ENCLOSURES (Check all that apply)

Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

Reply to Missing Parts/
Incomplete ApplicationReply to Missing Parts
under 37 CFR 1.52 or 1.53

Drawing(s)



Licensing-related Papers



Petition

Petition to Convert to a
Provisional Application

Power of Attorney, Revocation



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Remarks



After Allowance Communication to TC

Appeal Communication to Board
of Appeals and InterferencesAppeal Communication to TC
(Appeal Notice, Brief, Reply Brief)

Proprietary Information



Status Letter

Other Enclosure(s) (please identify
below):

Fax cover sheet

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Intel Americas

Signature



Printed name

Alan Pedersen-Giles

Date

August 15, 2005

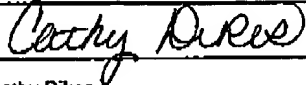
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Cathy Dikes

Date

August 15, 2005

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AUG 15 2005 PATENT
Attorney Docket No. 42.P10700

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of

Arthur Sheiman et al.

Application No.: 09/966,802

Filed: September 28, 2001

For: TIME VARYING FILTER WITH ZERO AND/OR
POLE MIGRATION

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)
) Group Art Unit: 2193

)
) Examiner: D. Malzahn
)
)

APPEAL BRIEF

08/16/2005 STEUMEL1 00000044 500221 09966802
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants submit herewith an Appeal Brief as required by 37 C.F.R. § 41.37. This Appeal Brief is in response to the Final Office Action dated March 14, 2005 and the Advisory Action dated May 23, 2005.

I. REAL PARTY IN INTEREST

The real party in interest is Intel Corporation, a corporation of Delaware.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants which relate to, directly affect or are directly affected by the Board's decision in this appeal.

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| By: <u>Cathy Dikes</u> Cathy Dikes | Date: <u>August 15, 2005</u> |

III. STATUS OF THE CLAIMS:

Claims 1, 2, 4-8, 10-14, 16-27, and 30-33 are pending in the application.

Claims 1, 7, 13, and 19-22 stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by Sakata et al. (U.S. Patent No. 5,140,541). Claims 2, 4-6, 8, 10-12, 14, 16-18, 23-27, and 30-33 stand allowable if rewritten in independent form.

The rejections of claims 1, 7, 13, and 19-22 are appealed. These rejected claims are reproduced in the attached Claims Appendix. The allowable claims, 2, 4-6, 8, 10-12, 14, 16-18, 23-27, and 30-33, are not reproduced in the Claims Appendix, because they are not "involved in the appeal" (37 C.F.R. § 41.37(c)(1)(vii)).

IV. STATUS OF AMENDMENTS:

A Response After Final was filed on April 1, 2005, but it contained no proposed amendments.

V. SUMMARY OF THE INVENTION:

Regarding independent claims 1, 13, 19, 21, and 22, a method may include filtering a segment of a signal using a filter and disengaging the filter in a sequence of graduated steps at the end of the segment (Figs. 1 and 2; page 4, line 19, through page 6, line 9). Regarding independent claims 7, 13, 20, 21, and 22, a method may include engaging a filter in a sequence of graduated steps at the beginning of a signal segment and filtering the segment of the signal using the filter (Figs. 4 and 5; page 9, line 11, through page 10, line 11). Regarding claims 1, 7, 13, and 19-21, filters may be disengaged at the end of signal segments and engaged at the beginning of the next segments. This may be repeated until the entire input signal has been processed (page 23, lines 10-14).

VI. GROUND OF REJECTION:

A. Claims 1, 7, 13, and 19-22 stand finally rejected under 35 U.S.C. § 102(b) over Sakata et al.

VII. ARGUMENT:

A. Claims 1, 7, 13, and 19-22 are patentable under 35 U.S.C. § 102(b) over Sakata et al.

Appellants first note that in three Office Actions, the Examiner has cited only once to the Abstract of Sakata et al. in its entirety (Non-final Office Action mailed August 18, 2004, page 2, numbered section 2, line 5). Other than this non-specific citation to the Abstract, no specific reading of the claims or other evidence from Sakata et al. has been provided. The Examiner has violated the requirement of 37 C.F.R. § 104(c)(2) that "the particular part [of the reference] relied on must be designated as nearly as practicable."

The rejection of claims 1, 7, 13, and 19-22 is facially deficient, because the Examiner has not made a *prima facie* case of anticipation. As the Federal Circuit has noted,

As adapted to ex parte procedure, Graham [v. John Deere Co.] is interpreted as continuing to place the 'burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103'.

In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)). The Examiner has not established a *prima facie* case by producing the required factual basis for the rejection of claims 1, 7, 13, and 19-22. Rather, the Examiner has provided only a bare allegation that the references anticipate the claims, which does not establish the required "factual basis" needed for a *prima facie* case of anticipation. The rejection of all appealed claims, 1, 7, 13, and 19-22, should be reversed for at least this reason.

The lack of a *prima facie* case of anticipation for all claims notwithstanding, certain ones of claims 1, 7, 13, and 19-22 will be argued separately in the following subheadings.

1. Claims 1 and 19:

a. Disengaging a filter not disclosed:

Appellants respectfully traverse the § 102(b) rejection of claims 1 and 19 over Sakata et al. Independent claims 1 and 19 require a method and article including, *inter alia*, "disengaging [a] filter in a sequence of graduated steps at the end of the segment." Sakata et al. fails to disclose all elements of the method and article in claims 1 and 19.

M.P.E.P. § 2111.01 states that "the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification." In the Amendment filed

November 17, 2004, Appellants explained that the claim term “disengaging” is defined¹ in the specification to mean changing a filter to a neutralized or ineffective state. The Final Office Action does not dispute this definition of “disengaging.”

Rather, page 2 of the Final Office Action and the Advisory Action postulate a “first filter” at a point when a filter has a first set of coefficients and a “second filter” when the same filter has a second set of coefficients. Then, the Final Office Action reasons, when the second filter is operational, the first filter has been disengaged. This argument does not comport with the actual teachings of Sakata et al.

Sakata et al. teaches only a single, physical filter (e.g., filter 108 in Fig. 1 or filter 300 in Fig. 18, which will be discussed from here on). Sakata et al. also teaches adjusting the cutoff frequency of filter 300 (see Fig. 10), but it does not disclose filter 300 being neutralized or ineffective at any time (i.e., “disengaging” as claimed). Because no evidence has been provided that either filter 108 or filter 300 in Sakata et al. is disengaged in a sequence of graduated steps, a *prima facie* case of anticipation has not been established. Thus, the § 102(b) rejection of claims 1 and 19 is improper and should be reversed.

Even if Sakata et al. taught a first filter at a first point in time and a second filter at a later time (which it does not as explained above), changing the cutoff frequency does not neutralize or render effective (i.e., disengage) the earlier-in-time filter. This will be explained with regard to Fig. 10 in Sakata et al. which illustrates frequency responses for a number of filter coefficients. Where, for example, the cutoff frequency changes, the “first filter” remains operational, because it continues to operate (i.e., stop certain frequencies) over at least a portion of its previous effective frequency range. Thus, even under the interpretation on page 2 of the Final Office Action, Sakata et al. fails to teach disengaging the “first filter” (as postulated by the Examiner), because filter 108 or 300 remains operational both before and after its coefficients change. Hence, it is not “disengage[ed] . . . in a sequence of graduated steps,” as required by claims 1 and 19.

Because no evidence has been provided that either filter 108 or filter 300 in Sakata et al. meets the “disengaging” claim language, a *prima facie* case of anticipation has not been

¹ See application page 4, lines 8-10, likening “disengagement” to “removal” and “switching . . . off.” See also application page 6, lines 8 and 9, likening “disengaged” to “a filter which has no effect.”

established. Hence, the § 102(b) rejection of claims 1 and 19 is improper and should be reversed.

b. Disengaging a filter at the end of the segment not disclosed:

No evidence has been provided that Sakata et al. discloses disengaging a filter in a sequence of graduated steps "at the end of the segment," as required by claims 1 and 19. Because no evidence has been produced, a *prima facie* case of anticipation has not been established. Nor can such a case be established, because Sakata et al. (e.g., Fig. 30 and its associated description) fails to disclose disengaging a filter "at the end of the segment" as set forth in the claims. The § 102(b) rejection of claims 1 and 19 is improper and should be reversed for this additional reason.

2. Claims 7 and 20:

a. Engaging a filter not disclosed:

Appellants respectfully traverse the § 102(b) rejection of claims 7 and 20 over Sakata et al. Independent claims 7 and 20 require a method and article including, *inter alia*, "engaging a filter in a sequence of graduated steps at the beginning of a signal segment." Sakata et al. fails to disclose all elements of the method and article in claims 7 and 20.

In the Amendment filed November 17, 2004, Appellants explained that the claim term "engaging" is defined² in the specification to mean changing a filter *from* a neutralized or ineffective state. The Final Office Action does not appear to dispute this definition of "engaging." Instead, the Final Office Action and Advisory Action call a single, physical filter a "first filter" at time A and a "second filter" at time B. This argument does not comport with the actual teachings of Sakata et al.

Sakata et al. teaches only a single, physical filter (e.g., filter 108 in Fig. 1 or filter 300 in Fig. 18, which will be discussed from here on) that is always operational. Sakata et al. also teaches adjusting the cutoff frequency of filter 300 (see Fig. 10), but it does not disclose filter 300 being neutralized or ineffective at any time. No evidence has been provided to date that filter 300 changes from a neutralized or ineffective state (i.e., "engaging" as claimed). All that

² See application page 4, lines 8-10, likening "engagement" to "insertion" and "switching on." See also application page 9, lines 11 and 12, stating "The inverse of neutralizing a filter is engaging, or enabling, a filter."

Sakata et al. discloses is that filter 300, for example, changes from one operational or "on" state to another operational or "on" state.

Because no evidence has been provided that either filter 108 or filter 300 in Sakata et al. meets the "engaging" limitation, a *prima facie* case of anticipation has not been established. Thus, the § 102(b) rejection of claims 7 and 20 is improper and should be reversed.

b. Engaging a filter at the beginning of a signal segment not disclosed:

No evidence has been provided that Sakata et al. discloses engaging a filter in a sequence of graduated steps "at the beginning of a signal segment," as required by claims 7 and 20. Because no evidence has been produced, a *prima facie* case of anticipation has not been established. Nor can such a case be established, because Sakata et al. (e.g., Fig. 30 and its associated description) fails to disclose engaging a filter "at the beginning of a signal segment" as set forth in the claims. The § 102(b) rejection of claims 7 and 20 is improper and should be reversed for this additional reason.

3. Claim 13:

In addition to the reasons given above in sections VII(A)(1) and VII(A)(2), claim 13 is allowable for the following reasons.

a. Engaging, filtering, and disengaging a filter not disclosed:

Appellants respectfully traverse the § 102(b) rejection of claim 13 over Sakata et al. Independent claim 13 requires a method including, *inter alia*, "engaging a filter in a sequence of graduated steps at the beginning of a signal segment; filtering the segment of the signal using the filter; and disengaging the filter in a sequence of graduated steps at the end of a signal segment." Sakata et al. fails to disclose all elements of the method in claim 13.

No evidence has been provided that Sakata et al. discloses *both* engaging a filter in a sequence of graduated steps "at the beginning of a signal segment" *and* disengaging the filter in a sequence of graduated steps "at the end of a signal segment," as required by claim 13. Because no evidence has been produced, a *prima facie* case of anticipation has not been established. The § 102(b) rejection of claim 13 should be reversed at least for lack of evidence.

Nor can such a case be established, because Sakata et al. fails to disclose engaging and disengaging a filter at the beginning and end of a signal segment as set forth in claim 13. The § 102(b) rejection of claim 13 is improper and should be reversed for this additional reason.

4. Claim 21:

In addition to the reasons given above in sections VII(A)(1) and VII(A)(2), claim 21 is allowable for the following reasons.

a. Disengaging then engaging a filter not disclosed:

Appellants respectfully traverse the § 102(b) rejection of claim 21 over Sakata et al. Independent claim 21 requires an article including, *inter alia*, "disengaging the filter in a sequence of graduated steps at the end of the segment; and engaging a filter in a sequence of graduated steps at the beginning of the next segment of the signal." Sakata et al. fails to disclose all elements of the article in claim 21.

No evidence has been provided that Sakata et al. discloses *both* disengaging a filter in a sequence of graduated steps "at the end of the segment," *and* engaging a filter in a sequence of graduated steps "at the beginning of the next segment," as required by claim 21. Because no evidence has been produced, a *prima facie* case of anticipation has not been established. The § 102(b) rejection of claim 21 should be reversed at least for lack of evidence.

Nor can such a case be established, because Sakata et al. fails to disclose disengaging a filter at the end of a segment and engaging a filter at the beginning of the next segment as set forth in claim 21. The § 102(b) rejection of claim 21 is improper and should be reversed for this additional reason.

5. Claim 22:

a. Inaudibly switching filter on and/or off not disclosed:

Appellants respectfully traverse the § 102(b) rejection of claim 22 over Sakata et al. Independent claim 22 requires a method including, *inter alia*, "inaudibly switching one or more filters on and/or off during processing of an input signal by: migrating their coefficients from an original set of values to a final set of values through a series of intermediate steps." Sakata et al. fails to disclose all elements of the method in claim 22.

Filter 300 in Sakata et al. is disclosed as being operational at different points with different filter coefficients (see col. 14, lines 16-20). Such disclosure does not meet the plain meaning of "switching one or more filters . . . off" as set forth in claim 22, because there is no disclosure that either set of filter coefficients causes the filter to be switched "off." Sakata et al. also fails to disclose "switching one or more filters . . . on," because the lack of a disclosed "off"

state for filter 300 prevents the "switching . . . on" language from being met. In any event, there is no disclosure in Sakata et al. that the filter adjustment therein is "inaudibl[e]" as claimed.

The § 102(b) rejection of claim 22 is improper and should be reversed for at least these reasons.

CONCLUSION

For the reasons set forth above, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejection of claims 1, 7, 13, and 19-22.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0221 and please credit any excess fees to such deposit account.

Respectfully submitted,

Dated: August 15, 2005



Alan Pedersen-Giles
Registration No. 39,996

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VIII. CLAIMS APPENDIX

1. (original) A method of time varying filtering, comprising:
 - a. filtering a segment of a signal using a filter; and
 - b. disengaging the filter in a sequence of graduated steps at the end of the segment;and
 - c. repeating steps a and b until all segments have been filtered.
7. (previously presented) A method of time varying filtering, comprising:
 - a. engaging a filter in a sequence of graduated steps at the beginning of a signal segment;
 - b. filtering the segment of the signal using the filter; and
 - c. repeating steps a and b until all segments have been filtered.
13. (previously presented) A method of time varying filtering, comprising:
 - a. engaging a filter in a sequence of graduated steps at the beginning of a signal segment;
 - b. filtering the segment of the signal using the filter;
 - c. disengaging the filter in a sequence of graduated steps at the end of a signal segment; and
 - d. repeating steps a-c until all segments have been filtered.
19. (original) An article comprising a computer readable medium having instructions stored thereon which when executed causes:
 - a. filtering a segment of a signal using a filter;
 - b. disengaging the filter in a sequence of graduated steps at the end of the segment;and
 - c. repeating steps a and b until all input signal segments have been filtered.

20. (original) An article comprising a computer readable medium having instructions stored thereon which when executed causes:

- a. engaging a filter in a sequence of graduated steps at the beginning of a signal segment;
- b. filtering the segment using the filter; and
- c. repeating steps a and b until all input signal segments have been filtered.

21. (original) An article comprising a computer readable medium having instructions stored thereon which when executed causes:

- a. filtering a segment of a signal using a filter;
- b. disengaging the filter in a sequence of graduated steps at the end of the segment;
- c. engaging a filter in a sequence of graduated steps at the beginning of the next segment of the signal; and
- d. repeating steps a-c until all input signal segments have been filtered.

22. (original) A method, comprising:
inaudibly switching one or more filters on and/or off during processing of an input signal
by:
migrating their coefficients from an original set of values to a final set of values through a series of intermediate steps.

Attorney Docket No.: 42.P10700

Application No.: 09/966,802

Page 11

IX. EVIDENCE APPENDIX

None.

Attorney Docket No.: 42.P10700

Application No.: 09/966,802

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X. RELATED PROCEEDINGS APPENDIX

None.